

### **REMARKS**

Reconsideration and allowance are respectfully requested.

The Examiner has not indicated consideration of the information disclosure statement filed on June 21, 2006. Indication of such consideration is requested.

The abstract and specification are amended in light of U.S. patent practice. No new matter is believed added. Entry and approval are requested.

Several claims are rejected for lack of clarity under 35 U.S.C. §112, second paragraph. The claims are amended to overcome these objections and also to improve readability. Withdrawal of this rejection is requested.

Claims 1, 5, 6, 16, 20 and 21 stand rejected for anticipation under 35 U.S.C. §102 based on U.S. Patent 5,896,566 to Averbuch. This rejection is respectfully traversed.

Averbuch is not particularly relevant to the claimed technology, other than indicating the availability of updated software for download to a mobile radio. While the indication that a software update is available is communicated over the radio interface, the actual downloading of the software to the mobile unit takes place by way of a battery charger/software downloader 108. This software download occurs over wires rather than the air interface “to avoid the need to perform expensive software downloads over the air.” See column 2, lines 33-34. Note the data interface is exemplified as a wired RS-232 port at column 3, lines 44-47. The independent claims, which already recite, “...providing a communication device with radio software... via the wireless network...,” are amended to further emphasize this distinction. For example, claim 1 recites “downloading said radio software via the available radio access technology wirelessly over the air via the available radio access technology.”

Since Averbuch is missing one or more features of the independent claims, withdrawal of this rejection is requested.

Claims 7-11, 13-15, 22-26, and 28-30 stand rejected under 35 U.S.C. §103 based on Averbuch and Coppinger. This rejection is respectfully traversed.


The office action does not explain how Coppinger remedies the deficiencies of Averbuch with respect to the independent claims. Neither reference teaches using multiple different radio access technologies (RATs) including selecting one of those RATs for use in the wireless software download.

The application is in condition for allowance. An early notice to that effect is requested.

Respectfully submitted,

**NIXON & VANDERHYTE P.C.**

By:

  
John R. Lastova  
Reg. No. 33,149

JRL:maa  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100